

# EXHIBIT H

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17  
18 **UNITED STATES DISTRICT COURT**  
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 RICHARD KADREY, et al.,  
21 Individual and Representative Plaintiffs,  
22 v.  
23 META PLATFORMS, INC., a Delaware  
24 corporation;  
25 Defendant.

Case No. 3:23-cv-03417-VC

**DEFENDANT META PLATFORMS, INC.'S  
FURTHER SUPPLEMENTAL AND AMENDED  
RESPONSES AND OBJECTIONS TO  
PLAINTIFFS' SECOND SET OF  
INTERROGATORIES**

Trial Date:  
Date Action Filed: July 7, 2023

**PROPOUNDING PARTY:** PLAINTIFFS RICHARD KADREY, SARAH SILVERMAN, CHRISTOPHER GOLDEN, TA-NEHISI COATES, JUNOT DÍAZ, ANDREW SEAN GREER, DAVID HENRY HWANG, MATTHEW KLAM, LAURA LIPPMAN, RACHEL LOUISE SNYDER, JACQUELINE WOODSON, LYSA TERKEURST, AND CHRISTOPHER FARNSWORTH

**RESPONDING PARTY:** DEFENDANT META PLATFORMS, INC.

**SET NUMBER: ONE SECOND**

Pursuant to Federal Rule of Civil Procedure 33 and Local Rule 33, Defendant Meta Platforms, Inc. (“Meta”) responds as follows to Plaintiffs Richard Kadrey, Sarah Silverman, Christopher Golden, Ta-Nehisi Coates, Junot Díaz, Andrew Sean Greer, David Henry Hwang, Matthew Klam, Laura Lippman, Rachel Louise Snyder, Jacqueline Woodson, Lysa TerKeurst, and Christopher Farnsworth’s (“Plaintiffs”) Second Set of Interrogatories (“Interrogatories”).

**I. RESPONSES TO ALL INTERROGATORIES**

**1.** Meta’s responses to these Interrogatories are made to the best of Meta’s current employees’ present knowledge, information, and belief. Said responses are at all times subject to such additional or different information that discovery or further investigation may disclose and, while based on the present state of Meta’s recollection, is subject to such refreshing of recollection, and such additional knowledge of facts, as may result from Meta’s further discovery or investigation. Meta reserves the right to make any use of, or to introduce at any hearing and at trial, information and/or documents responsive to these Interrogatories but discovered subsequent to the date of these responses, including, but not limited to, any such information or documents obtained in discovery herein.

**2.** To the extent that Meta responds to an Interrogatory by stating that Meta will provide information or documents that Meta deems to embody material that is private, business confidential, proprietary, trade secret, or otherwise protected from disclosure pursuant to Federal Rule of Civil Procedure 26(c) and/or Federal Rule of Evidence 501, Meta will only do so subject to the parties’ stipulated protective order governing the unauthorized use or disclosure of such information or documents with a designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL

1 - ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" distinction  
 2 (ECF No. 90, the "Protective Order").

3       **3.** Meta reserves all objections or other questions as to the competency, relevance,  
 4 materiality, privilege or admissibility as evidence in any subsequent proceeding in or trial of this  
 5 or any other action for any purpose whatsoever of Meta's responses herein and any document or  
 6 thing identified or provided in response to the Interrogatories.

## 7 **II. OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

8 Whether or not separately set forth in response to each Interrogatory, Meta makes these  
 9 objections to the following Instructions and Definitions:

10       **1.** Meta objects to all defined terms to the extent that they are not utilized in Plaintiffs  
 11 Second Set of Interrogatories.

12       **2.** Meta objects to the definition of "Agreements" as overbroad and unduly  
 13 burdensome to the extent that it encompasses oral contracts, arrangements, or understandings,  
 14 including those that are informal. Meta further objects to the definition of "Agreements" as vague,  
 15 ambiguous, and unintelligible as to the term "modifications" to the extent it is intended to mean  
 16 something distinct from "versions" or "amendments." Meta will construe "Agreements" to mean  
 17 written contracts, including drafts, versions, amendments, exhibits, and appendices thereof.

18       **3.** Meta objects to the definition of "Communications" to the extent it is inconsistent  
 19 with and otherwise seeks to circumvent the custodian and search term limits for electronic  
 20 communications (including emails and other electronic correspondence, and documents attached  
 21 thereto), as provided in the Stipulated Protocol regarding Electronic Discovery ("ESI  
 22 Order"). Meta will produce Documents, including Communications, pursuant to the terms of the  
 23 ESI Order, and any agreement to produce such Documents is explicitly in view of the terms of the  
 24 ESI Order. To the extent that Meta responds to a Request, including by agreeing to search for  
 25 relevant, non-privileged communications in Meta's possession, custody, or control, such response  
 26 is not a representation that any particular custodian or search term is appropriate. Meta expressly  
 27 reserves the right to object to any custodians and search terms proposed by Plaintiffs.  
 28

1           **4.**       Meta objects to the definition of “Complaint” which refers to an outdated complaint  
2 that has since been replaced by the Corrected Second Consolidated Amended Complaint (ECF No.  
3 133). Meta will construe “Complaint” to refer to the Corrected Second Consolidated Amended  
4 Complaint.

5           **5.**       Meta objects to the definitions of “Llama 1,” “Llama 2,” and “Llama 3” as vague  
6 and ambiguous as to the undefined terms “precursor models” and “variant models.” Meta further  
7 objects to these definitions as overbroad, unduly burdensome, and disproportionate to the needs of  
8 the case to the extent that it purports to require Meta to produce documents or information  
9 concerning large language models (“LLMs”) that were not publicly released and/or were not trained  
10 on corpuses of text that include any of Plaintiffs’ allegedly copyrighted works. For the same reason,  
11 Meta objects to these definitions to the extent that they purport to require Meta to produce  
12 documents or information concerning LLMs that are not relevant to any party’s claims or  
13 defenses. For purposes of these responses, Meta construes the term “Llama 1” to refer to the LLM  
14 released by Meta as Llama on February 24, 2023, the term “Llama 2” to refer to the LLM released  
15 by Meta under that name on July 18, 2023, and the term “Llama 3” to refer to the LLM released by  
16 Meta under that name on April 18, 2024, July 23, 2024, and September 25, 2024.

17           **6.**       Meta objects to the definition of “Meta” as overbroad, unduly burdensome, and  
18 disproportionate to the needs of the case to the extent that it purports to require Meta to produce  
19 documents or information concerning any “owners” regardless of shareholder interest and  
20 shareholders with an ownership of in Meta of greater than 5%. Meta will construe “Meta” or “You”  
21 to mean Meta Platforms, Inc.

22           **7.**       Meta objects to the definition of “Meta Language Models” as vague and ambiguous  
23 as to the undefined terms “precursor models” and “variant models.” Meta further objects to this  
24 definition as overbroad, unduly burdensome, and disproportionate to the needs of the case to the  
25 extent that it purports to require Meta to produce documents concerning LLMs that were not  
26 publicly released and/or were not trained on corpuses of text that allegedly include any of Plaintiffs’  
27 allegedly copyrighted works. For the same reason, Meta objects to this definition to the extent that  
28 it purports to require Meta to produce documents that are not relevant to any party’s claims or

1 defenses. Meta will construe “Meta Language Models” to mean the models within the Llama  
2 family of LLMs that have been publicly released by Meta, namely, Llama 1, Llama 2, Code Llama,  
3 and Llama 3 (as those terms are construed above).

4 **8.** Meta objects to the definition of “Relevant Period” as vague, ambiguous, and  
5 unintelligible, as it is defined circularly to mean “all times relevant to... the Complaint.” Meta will  
6 construe the Relevant Period to mean January 1, 2022 to the present.

7 **9.** Meta objects to the definition of “Training Data” as vague, ambiguous, and  
8 unintelligible as to the term “other material,” which is indefinite and undefined. Meta further  
9 objects to the definition of “Training Data” as vague and ambiguous as to the phrase “considered  
10 for use,” which, read literally, would encompass any dataset considered by any Meta employee,  
11 regardless of the seriousness of such consideration and whether or not that consideration was ever  
12 acted upon. Meta further objects to this definition to the extent it purports to include datasets (or  
13 “considered” datasets) that include content to which Plaintiffs have made no claim of ownership  
14 and which are not the subject of any allegations of copyright infringement by Plaintiffs. Meta will  
15 construe “Training Data” to mean the “Books3” textual dataset used to train the Meta Language  
16 Models (as construed above).

17 **10.** Meta objects to the definition of “You” and “Your” as overbroad, unduly  
18 burdensome, and nonsensical, insofar as it refers to “the specific Defendant(s) producing  
19 documents in response to these Requests.” There is only one defendant in this case, Meta, and this  
20 response is to the Interrogatories, not any document requests. Meta further objects to this definition  
21 to the extent it seeks to impose upon Meta an obligation to investigate information or documents  
22 outside of its possession, custody, or control. For purposes of these responses, Meta construes the  
23 terms “You” and “Your” coextensively with Meta (as construed above).

24 **11.** Meta objects to Instruction 1 to the extent that it purports to require more of Meta  
25 than any obligation imposed by law, and would subject Meta to unreasonable and undue burden  
26 and expense. Meta will supplement or amend its responses to these Interrogatories in accordance  
27 with Meta’s obligations under Rule 26(e).  
28

1           **12.** Meta objects to Instruction 2, which defines the “Relevant Period” as January 1,  
2 2000 to the present. Such definition is overbroad, unduly burdensome, and disproportionate to the  
3 needs of the case because it both precedes the existence of Facebook (and therefore Meta) by  
4 several years, and the development of the Meta Language Models by decades. For the same reason,  
5 the definition of “Relevant Period,” as applied to the Interrogatories, would encompass information  
6 that is irrelevant to the parties’ claims and defenses. The Instruction is also inconsistent with the  
7 definition of “Relevant Period” provided on page 3 of the Interrogatories and is therefore vague  
8 and ambiguous. Meta will construe the Relevant Period to mean January 1, 2022 to the present.

9           **13.** Meta objects to Instruction 4 (referring to Fed. R. Civ. P. Rule 33(d)) on the ground  
10 that it purports to require more of Meta than any obligation imposed by law, and would subject  
11 Meta to unreasonable and undue burden and expense.

12           **14.** Meta objects to Instruction 6 (outlining additional obligations for allegedly  
13 incomplete responses) to the extent that it purports to require Meta to investigate information  
14 outside of its possession, custody, or control.

15           **15.** Meta objects to Instruction 8 (outlining additional obligations for any privilege  
16 objection) on the ground that it purports to require more of Meta than any obligation imposed by  
17 law, and would subject Meta to unreasonable and undue burden and expense.

18           **16.** Meta objects to Instruction 9 (outlining additional obligations for any work product  
19 objection) on the ground that it purports to require more of Meta than any obligation imposed by  
20 law, and would itself require disclosure of information protected by attorney-client privilege and/or  
21 attorney work product doctrine.

22           **17.** Meta objects to Instruction 10 (building in a separate question for each  
23 Interrogatory) on the ground that it purports to require more of Meta than any obligation imposed  
24 by law, seeks disclosure of information protected by attorney-client privilege and/or attorney work  
25 product doctrine, and seeks to circumvent Plaintiffs’ interrogatory limit.

26           **18.** Meta objects to Instruction 11 (purporting to require responses for “all predecessors,  
27 successors, subsidiaries ... divisions and/or affiliates of Meta”), on the ground that it purports to  
28 require more of Meta than any obligation imposed by law, and would subject Meta to unreasonable

1 and undue burden and expense. Meta further objects to Instruction 11 to the extent that it purports  
 2 to require Meta to investigate information outside of its possession, custody, or control. As such  
 3 the Instruction is overly broad, as well. Subject to any objections applicable to a particular  
 4 Interrogatory, Meta will conduct a reasonable, proportionate search for non-privileged, relevant,  
 5 responsive information within its possession, custody, or control.

6 **19.** In responding to all Interrogatories, Meta will comply with the requirements of the  
 7 Federal Rules of Evidence and Federal Rule of Civil Procedure 26.

### 8 **III. OBJECTIONS AND RESPONSES TO INDIVIDUAL INTERROGATORIES**

#### 9 **INTERROGATORY NO. 16:**

10 State all facts on which you base Your contention that Your conduct constitutes fair use (17  
 11 U.S.C. § 107).

#### 12 **FIRST AMENDED AND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16:**

13 Meta incorporates by reference its objections and definitions above.

14 Meta objects to this Interrogatory as vague and ambiguous as to the phrase “Your conduct,”  
 15 which is undefined and could refer to any conduct. Meta will construe this Interrogatory to seek  
 16 information concerning Meta’s claim of fair use in connection with the conduct alleged in the  
 17 Complaint (as construed above).

18 Meta objects to this Interrogatory as overbroad, unduly burdensome, and disproportionate  
 19 to the needs of the case to the extent it seeks information that Meta does not intend to rely on to  
 20 support a claim of fair use and calls for a lengthy narrative with regard to twelve different plaintiffs  
 21 and more than forty works.

22 Meta objects to this Interrogatory to the extent it prematurely calls for expert testimony or  
 23 identification of facts yet to be disclosed by Plaintiffs, and to the extent that it requires Meta to  
 24 respond to legal arguments or theories not yet disclosed by Plaintiffs.

25 Finally, Meta objects to this Interrogatory because it exceeds Plaintiffs’ limit of 25  
 26 Interrogatories under Rule 33(a)(1).

27 Subject to and without waiving the foregoing objections, and pursuant to the terms of the  
 28 Protective Order, Meta responds as follows:



1 The alleged use of Plaintiffs' asserted works, to the extent it is shown to have occurred, is  
 2 highly transformative in nature, because it adds something new, with a further purpose or different  
 3 character, altering those works with considerable new expression, meaning, or message. To the  
 4 extent Plaintiffs' works were used to train the Meta Language Models, the purpose was  
 5 transformative both in terms of purpose and expression. With respect to purpose, Plaintiffs' works  
 6 were allegedly used as data to train the models. In other words, the works were allegedly a part of  
 7 a corpus of text (specifically, terabytes of text from a variety of sources), from which the models  
 8 built complex statistical representations of language derived from the patterns, structures, and  
 9 relationships between words within the corpus. This enables the models to predict the next word  
 10 in a sequence, and thereby provide useful responses to any manner of input prompts. Such use of  
 11 textual material serves a fundamentally different purpose from the original texts on which the Meta  
 12 Language Models were trained. *See e.g.*, Meta\_Kadrey\_00000001-00000077,  
 13 Meta\_Kadrey\_00000078-00000104, Meta\_Kadrey\_00000224-00000248,  
 14 Meta\_Kadrey\_00093669- Meta\_Kadrey\_00093760.

15 The text corpus used to train the Meta Language Models includes a large amount of textual  
 16 materials, and to the extent Plaintiffs' works were used to train those models, they would constitute  
 17 a tiny fraction of the textual training dataset (both individually and collectively). The purpose of  
 18 the models, and the use of text datasets, is to create new, original textual output, not to reproduce  
 19 the content of the datasets with which it was trained. This is demonstrated by, among other things,  
 20 Meta's efforts to minimize the models' ability to memorize and/or output training data verbatim  
 21 (*see e.g.*, Meta\_Kadrey\_00000277) and the wide variety of uses that have been made of the models.  
 22 *See e.g.*, Meta\_Kadrey\_00092978-00093308, Meta\_Kadrey\_00062157. Indeed, all Plaintiffs have  
 23 admitted that they are not aware of any output from any Meta Language Model that replicates any  
 24 protected expression in their at-issue books. *See e.g.*, T. Coates 7/22/2024 Resps. & Objs. to Meta's  
 25 2nd Set of RFAs, Resp. to RFA No. 24 (admitting, subject to objections, that Plaintiff is "personally  
 26 unaware of any text generated by any of Meta's Llama models that infringes [Plaintiff's]  
 27 ASSERTED WORKS."); J. Díaz 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to  
 28 RFA No. 24 (same); C. Golden 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to

1 RFA No. 24 (same); A. Greer 7/22/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA  
 2 No. 24 (same); D. Hwang 7/22/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No.  
 3 24 (same); R. Kadrey 7/22/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 24  
 4 (same); M. Klam 7/22/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 24  
 5 (same); L. Lippman 7/22/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 24  
 6 (same); S. Silverman 7/22/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 24  
 7 (same); R. Snyder 7/22/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 24  
 8 (same); J. Woodson 7/22/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 24  
 9 (same); C. Golden 9/17/2024 Dep. 260:6–261:13 (Mr. Golden testifying that the present lawsuit is  
 10 not about what comes out of Meta’s large language models); A. Greer 9/24/2024 79:21–80:3 (Mr.  
 11 Greer testifying that his claims concern the use of his works to train large language models); D.  
 12 Hwang 9/16/2024 Dep. 252:23–253:6 (Mr. Hwang testifying that the operative complaint does not  
 13 allege that the Meta Language models create any output that is similar to any of his books or plays);  
 14 L. TerKeurst 9/23/2024 Dep. 226:20–25, 229:5–12 (Ms. TerKeurst testifying that she was not  
 15 aware of any text generated by the Meta Language Models that was substantially similar that of her  
 16 asserted works); J. Woodson Dep. 328:23–329:4 (Ms. Woodson testifying that she is not aware of  
 17 any output from any Meta LLM in which any of her characters appeared.); S. Silverman 10/10/2024  
 18 Dep. 42:5–8 (Q: “[D]oes it matter if Meta's models never output any language from your book?” A:  
 19 “It doesn't matter at all.”); *id.* 156:25–157:2 (“It doesn't matter what he does with it or what output  
 20 comes from it. It's not right.”); *id.* 321:9–11 (“It's not about the output. If the output might not be  
 21 this book, but without this book it wouldn't have the out-book [SIC] . . . .”); T. Coates 11/21/2024  
 22 Dep. 52:22–53:11 (Mr. Coates testifying that he has not personally created or witnessed someone  
 23 create output from Meta’s AI model that replicates or regurgitates portions of his books); M. Klam  
 24 Rough Drft. Dep. 38:11–16, 234:5–11 (Mr. Klam testifying that he is unaware of any instance in  
 25 which any Meta AI tool has output verbatim text from any of his books and cannot identify any  
 26 language he has written in any of his books that was reproduced in the output of Meta’s AI model);  
 27 R. Snyder Rough Drft. Dep. 36:2–4 (Ms. Snyder testifying that she has never seen any output  
 28 generated by a Meta AI model that copies any language of hers); *cf.* D. Hwang 9/16/2024 Dep.

1 363:6–15 (Mr. Hwang testifying that he did not believe when he filed suit that the Meta Language  
2 Models could create works that were substantially similar to his works); L. Lippman 9/17/2024  
3 Dep. 311:16–312:1 (Ms. Lippman testifying that she is aware that the current version of the  
4 Complaint does not allege that Meta’s generative AI tools create any output that is substantially  
5 similar to her books); A. Greer 9/24/2024 Dep. 28:17–20 (same); J. Díaz 11/20/2024 Dep. 216:4–  
6 13 (same)

7 The transformative nature also extends to expression. The pre-training process involves a  
8 number of steps that fundamentally transform the input dataset text in order to facilitate training of  
9 the large language model (“LLM”), which Meta will further describe in further detail in connection  
10 with expert discovery. At a high-level, the pre-training process includes a “tokenization” step in  
11 which the data in training datasets is broken down and encoded into a series of values known as  
12 “tokens” which are used to create numerical vector representations that the LLM training  
13 algorithms can understand. (*See e.g.*, Meta\_Kadrey\_00000078-00000104, Section 2.1  
14 (“Tokenizer”); Meta\_Kadrey\_00000001-00000077, at 6 (“Tokenizer”).) The input data is then  
15 used in a complex series of LLM training algorithms that adjust the large number of numerical  
16 values (known as parameters which include weights) in the LLM, that define the connections and  
17 relationships between the nodes in the LLM. By adjusting these weights, the LLM can “learn” and  
18 better predict correct outputs based on input data. These numerical parameters enable the LLM,  
19 after the training process, to generate better output data in response to input prompts. The process  
20 of training of an LLM represents a complete transformation into a form that is entirely  
21 unrecognizable from the original training data.

22 The transformativeness of Meta’s use also extends to the post-training and fine-tuning  
23 processes used with the Meta Language Models. Plaintiffs have not alleged that their works were  
24 used as data in any post-training and fine-tuning processes for any Meta Language Model, but  
25 nevertheless, post-training and fine-tuning processes similarly involve a highly transformative use  
26 of the data used in those processes, both in terms of purpose and expression. The data used in post-  
27 training and fine-tuning is used to fine tune model parameters to improve the performance, quality,  
28 and behavior of the models and their responses. For example, in the post-training stage, “the model

1 is tuned to follow instructions, align with human preferences, and improve specific capabilities (for  
 2 example, coding and reasoning).” The Llama 3 Herd of Models, p.1. In the post-training and fine-  
 3 tuning processes (which will be discussed in more detail in expert discovery), post-training data is  
 4 likewise used in a series of complex LLM training algorithms that further tailor the model  
 5 parameters to improve the quality of responses and the ability of the model to perform various  
 6 tasks. Post-training and fine-tuning processes also generally involve an amount of data that  
 7 constitutes a fraction of the amount of data used in pre-training the model. Additionally, and for  
 8 the same reasons, the transformativeness of Meta’s use also extends to research and evaluations  
 9 (including ablation experiments) to assess the behavior and performance of the Meta Language  
 10 Models. Plaintiffs likewise have not alleged that their works were used as data for research or  
 11 evaluation of Meta Language Model, but nevertheless, the data used in these processes serves the  
 12 transformative purpose of studying and improving model behavior, and furthering the research and  
 13 development of the Meta Language Models.

14 As a further indication of the transformative nature, and the fact that the training process  
 15 does not simply make a copy of the input dataset, the training process is so computationally  
 16 complex that it requires an enormous amount of computing power. *See e.g.*,  
 17 Meta\_Kadrey\_00000001-00000077, at 4 (“When training a 65B-parameter model, our code  
 18 processes around 380 tokens/sec/GPU on 2048 A100 GPU with 80GB of RAM. This means that  
 19 training over our dataset containing 1.4T tokens takes approximately 21 days.”).

20 Aside from its highly transformative nature, Meta’s alleged use also has substantial non-  
 21 commercial, nonprofit, and educational (including research) purposes. Meta is investing billions  
 22 of dollars in research and development of state-of-the-art LLM technology that it is then making  
 23 available to the public. In particular, the training of the Meta Language Models resulted in Meta’s  
 24 release of Llama 1, Llama 2, CodeLlama, and Llama 3, 3.1, and 3.2 to the open source  
 25 community. These LLMs were provided openly to the public, pursuant to an open license that  
 26 permits developers, researchers, and institutions (with the exception of licensees with more than  
 27 700 million monthly active users) to use and modify the Llama models free of charge. *See e.g.*,  
 28 Meta\_Kadrey\_00000160-00000162, Meta\_Kadrey\_00093275-00093284,

1 Meta\_Kadrey\_00093658-00093760. The open release of Llama has resulted in the Llama models  
2 being downloaded hundreds of millions of times by researchers and developers from around the  
3 world and has catalyzed development of new and improved AI tools and technologies. *See e.g.*,  
4 Meta\_Kadrey\_00092978-00093308, Meta\_Kadrey\_00062157. The open and public release of  
5 Llama has allowed the public to access highly capable LLM technologies that would otherwise be  
6 available only to large organizations and/or at considerable expense. More broadly, Meta's  
7 investment and open release is contributing to the U.S. economy, the emergence of a new and  
8 important industry, and the U.S.'s global leadership of that industry over geopolitical  
9 competitors. In that regard, Meta has agreed to permit members of the Five Eyes intelligence  
10 alliance, namely, the United States, Canada, UK, Australia, and New Zealand, to use the Meta  
11 Language Models. *See e.g.*, Meta\_Kadrey\_00213585.

12 Plaintiffs' allegedly infringed works were published prior to Meta's alleged use of those  
13 works. And Meta's use of large volumes of texts was necessary to extract data regarding, e.g.,  
14 word frequencies, grammar, and syntax from those works to generate new content. This  
15 information constitutes either facts and ideas, which are not protectable by copyright, or is  
16 otherwise unrelated to the purpose of copyright protection. Furthermore, given that training the  
17 Meta Language Models requires terabytes of text, that greater volumes of text tends to improve  
18 model performance on objective benchmarks measuring reasoning and knowledge of facts, and the  
19 formats in which the text is available, it was reasonable for Meta to utilize copies of entire works  
20 (as opposed to portions thereof), in particular given Meta's efforts to develop the models in a  
21 manner that minimizes the likelihood that training data can be reproduced as model output. For  
22 example, books data comprised only approximately 4.5% of tokens used to train Llama 1 and only  
23 4.4% of tokens used to train Llama 2.

24 The ordinary market for Plaintiffs' works is the market for people to purchase and read the  
25 books and, possibly, to create derivative works from those books, such as for audio books and film  
26 and television adaptations. The Meta Language Models and their outputs do not serve as a market  
27 substitute for the Plaintiffs' asserted works, do not compete with those works, and do not harm the  
28 value of Plaintiffs' asserted works. Plaintiffs have produced no evidence to the contrary, such as

evidence of lost sales or other financial harm. To the contrary, plaintiffs have admitted that they are not aware of any such harm. *See e.g.*, T. Coates 9/6/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 15 (admitting, subject to objections, that Plaintiff is unaware of lost sales due to alleged infringement); J. Díaz 9/6/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 15 (same); C. Golden 8/28/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 15 (same); A. Greer 9/6/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 15 (same); D. Hwang 9/6/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 15 (same); R. Kadrey 8/28/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 15 (same); M. Klam 9/6/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 15 (same); L. Lippman 9/6/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 15 (same); S. Silverman 8/28/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 15 (same); R. Snyder 9/6/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 15 (same); J. Woodson 9/6/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 15 (same); L. TerKeurst 9/12/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 15 (similar); A. Greer 9/6/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 16 (admitting, subject to objections, that Plaintiff’s book sales have not decreased due to the alleged use of Plaintiff’s Asserted Works to train large language models); L. TerKeurst 9/6/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 16 (similar); T. Coates 9/19/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 18 (admitting, subject to objections, that Plaintiff is unaware of lost licensing opportunities due to alleged infringement); J. Díaz 9/19/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 18 (same); C. Golden 9/19/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 18 (same); A. Greer 9/19/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 18 (same); D. Hwang 9/19/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 18 (same); R. Kadrey 9/19/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 18 (same); M. Klam 9/19/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 18 (same); L. Lippman 9/19/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 18 (same); S. Silverman 9/19/2024 Resps. & Objs. to Meta’s 2nd Set of RFAs, Resp. to RFA No. 18 (same); R. Snyder 9/19/2024 Resps. & Objs. to



Meta's 2nd Set of RFAs, Resp. to RFA No. 18 (same); J. Woodson 9/19/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 18 (same); L. TerKeurst 9/12/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 18 (same); T. Coates 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (admitting, subject to objections, that Plaintiff is unaware of (1) persons reading text generated by Meta's Llama models as a substitute for Plaintiff's Asserted Works as described in RFA 22, and (2) documentary evidence of persons reading text generated by Meta's Llama models as substitute for Plaintiff's Asserted Works as described in RFA 23); J. Diaz 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (same); C. Golden 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (same); A. Greer 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (same); D. Hwang 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (same); R. Kadrey 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (same); M. Klam 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (same); L. Lippman 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (same); S. Silverman 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (same); R. Snyder 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (same); J. Woodson 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (same); L. TerKeurst 8/21/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (similar); D. Hwang 9/16/2024 Dep. 254:7–13 (Mr. Hwang testifying that he did not know whether he had experienced any financial loss as a result of the alleged training of the Meta Language Models on his asserted works); D. Hwang 9/16/2024 Dep. 290:10–17, 291:22–292:4 (Mr. Hwang testifying that he was not aware of any lost sales of his asserted works due to the alleged infringement in the complaint); R. Kadrey 9/25/2024 Dep. 223:23–224:1 (Mr. Kadrey testifying that he was unaware of any injury other than purported harm of not receiving compensation from Meta); R. Kadrey 9/25/2024 Dep. 222:6–9 (Mr. Kadrey testifying that he was not aware of any lost sales of his asserted works due to the alleged infringement in the complaint); L. Lippman 9/17/2024 Dep. 339:3–10 (Ms. Lippman testifying that she is unaware of any financial harm that she has suffered as a result of conduct by

Meta alleged in the Complaint); A. Greer 9/24/2024 Dep. 120:21–121:10 (Mr. Greer testifying that he is unaware of any lost book sales or lost licensing opportunities as a result of Meta’s alleged infringement of his works, or whether it is possible that book sales have actually increased due to his participation in this lawsuit); S. Silverman 10/10/2024 Dep. 204:12–205:7, 296:10–297:2 (Ms. Silverman testifying that she is unaware of any evidence to suggest someone did not buy her book because they could generate a summary on a Meta AI tool, evidence of lost sales or lost licensing opportunities due to Meta’s conduct, or any instance in which another person did not seek to license her book because of Meta’s actions); T. Coates 11/21/2024 Dep. 123:19–125:25 (Mr. Coates testifying that he is unaware of any lost sales or lost licensing opportunities due to Meta’s LLMs); J. Díaz 11/20/2024 Dep. 337:22–339:6, 340:21–350:16 (Mr. Díaz testifying that he is unaware of any decrease in sales of his books or any monetary harm suffered due to Meta’s use of his books to train its Llama models) ; R. Snyder 12/11/2024 Rough Drft. Dep. 249:22–250:1, 250:14 251:1–253:5, 259:19–23 (Ms. Snyder testifying that she is unaware of any evidence of lost sales or lost licensing opportunities as a result of Meta’s conduct alleged in the Complaint); J. Woodson 9/30/2024 Dep. 383:14–20, 389:5–20 (Ms. Woodson testifying that she is unaware of any lost licensing opportunities, loss of income, or lost sales as a result of Meta’s conduct alleged in the Complaint); M. Klam 12/10/2024 Rough Drft. Dep. 325:21–326:3, 328:6–10, 330:13–16 (Mr. Klam testifying that he is unaware of any evidence that he lost sales of his asserted works or lost licensing opportunities as a result of Meta’s conduct alleged in the Complaint); C. Farnsworth 12/4/2024 Rough Drft. Dep. 138:20–139:8 (Mr. Farnsworth testifying that he could not point to any specific lost opportunity he suffered due to Meta’s release of its Llama model).

Moreover, there was no market for licensing Plaintiffs’ literary books as training data for LLMs at the time Meta first Llama 1 or at the time Plaintiffs’ filed their lawsuit, and there is no such market today. Plaintiffs have admitted as much in discovery. Moreover, testimony from Meta’s witnesses, including, by way of example, from Sy Choudhury, and Alex Boesenberg, indicate that there has not been, and is not a market for licensing books for AI training. *See e.g.*, S. Choudhury 12/5/2024 Dep. 20:6–22:21, 65:10–21; A. Boesenberg 11/18/2024 Dep. 381:14–22. Moreover, any particular book has no independent value as training data and/or is



1 interchangeable with countless other books. In any case, such a market would be for a  
2 transformative use. It would also be impractical, if not impossible, for companies developing  
3 LLMs to attempt to negotiate licenses with each individual book rights holder for various reasons,  
4 including but not limited to the amount of time and cost necessary to do so would have precluded  
5 development of the models in the first instance, in particular given the time and costs relative to the  
6 de minimis value of individual works to the development of the models. In support, Meta intends  
7 to rely on Plaintiffs' discovery responses and testimony, expert reports and testimony, percipient  
8 witness testimony, as well as documents produced in this litigation

9 **INTERROGATORY NO. 17:**

10 If You or any of Your employees and/or agents intend to assert the advice of counsel  
11 defense, state any and all facts upon which You or any of your employees and/or agents intend to  
12 rely on for that contention.

13 **SECOND AMENDED RESPONSE TO INTERROGATORY NO. 17:**

14 Meta incorporates by reference its objections and definitions above.

15 Meta objects to this Interrogatory as vague and ambiguous as to the reference to "Your  
16 employees and/or agents" with respect to any defense in this case, as no Meta employees or agents  
17 are parties to this case.

18 Meta objects to this Interrogatory because it exceeds Plaintiffs' limit of 25 Interrogatories  
19 under Rule 33(a)(1).

20 Subject to and without waiving the foregoing objections, Meta responds as follows: Meta  
21 does not intend to assert the advice of counsel defense in this case.

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1 Dated: December 13, 2024

COOLEY LLP

2 By: /s/ Judd Lauter

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**PROOF OF SERVICE**

I am a citizen of the United States and a resident of the State of California. I am employed in Los Angeles County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is Cooley LLP, 355 South Grand Avenue, Suite 900, Los Angeles, CA 90071. On the date set forth below I served the documents described below in the manner described below:

- **DEFENDANT META PLATFORMS, INC.'S FURTHER SUPPLEMENTAL AND AMENDED RESPONSES AND OBJECTIONS TO PLAINTIFFS' SECOND SET OF INTERROGATORIES**



(BY ELECTRONIC MAIL) I am personally and readily familiar with the business practice of Cooley LLP for the preparation and processing of documents in portable document format (PDF) for e-mailing, and I caused said documents to be prepared in PDF and then served by electronic mail to the parties listed below.

on the following part(ies) in this action:

Executed on December 13, 2024, at Los Angeles, California.

/s/Jerry Gonzalez

Jerry Gonzalez

**SERVICE LIST**

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